IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Gheesa Lal @ Banwari Vs. State of Rajasthan
(D.B. Criminal Appeal No.1213/2002)

2. Gheesa Lal @ Banwari Vs. State of Rajasthan
(D.B. Criminal Jail Appeal No.1639/2003)

D. B. Criminal Appeals under Sec.374 (2) Cr.P.C. against the judgment dated 2-7-2002 in Sessions Case No.18/2001 passed by Shri Yashpal Singh, RHJS, Additional Sessions Judge No.2 Sikar.

Date of Judgment: August 02, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Raj Kamal Gaur, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Gheesa Lal @ Banwari, appellant herein, was put to trial before learned Additional Sessions Judge No.2, Sikar, who vide judgment dated July 2, 2002 convicted and sentenced him as under:-

U/s.302 IPC:
To suffer life imprisonment and fine of Rs.2000/-, in default to further suffer simple imprisonment for two months.
U/s.201 IPC:
To suffer rigorous imprisonment for two years and fine of Rs.1000/-, in default to further suffer simple imprisonment for one month.
U/s.379 IPC:
To suffer rigorous imprisonment for one year.

Substantive sentences were ordered to run concurrently.

2. It is the prosecution case that on February 12, 2001 informant Dhukal Singh (Pw.8) submitted a written report (Ex.P-19) at Police Station Kotwali Sikar to the effect that on February 11, 2001 around 12 O' clock the informant and his younger brother Kalyan Singh aged 30 years boarded a bus upto village Kochhor. Since Kalyan Singh had to go to Assam, the informant got down at Kocchor and Kalyan Singh proceeded to Sikar. On coming back to his village the informant intimated his youngest brother Sanwar Mal, who was studying in Sikar College, to assist Kalyan Singh in boarding the train to Assam at 8 PM. When Kalyan Singh did not reach Sikar, the informant went for his search and found half burnt dead body of Kalyan Singh in a pit near Kacchi Basti Sikar. At the time of leaving the house Kalyan Singh was having a sum of Rs.800/- and a bag of his garments. On that report a case under sections 302 and 201 IPC was registered and investigation commenced. Dead body was subjected to autopsy, necessary memos were drawn, statements of witnesses were recorded, appellant was arrested and on completion of investigation charge sheet was filed against the appellant. In due course the case came up for trial before the learned Additional Sessions Judge No.2, Sikar. Charges under sections 302, 379 and 201 IPC were framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as may as 16 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence. No witness in support of his defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. There is no ocular version of the incident and the prosecution

entirely bases its case on circumstantial evidence. Learned counsel for the appellant canvassed before us that the circumstances relied on by the prosecution have not been satisfactorily established and that in any event the circumstances said to establish against the appellant do not provide a complete chain to bring home the guilt against the appellant.

4. The standard of proof required to convict a person on circumstantial evidence is now well established by a series of decision of the Hon'ble Supreme Court. According to that standard the circumstances must be fully established and the chain of evidence must be so complete as not to leave any reasonable ground for a conclusion consistence with the innocence of the accused. Bearing these principles in mind we shall examine the circumstances appearing against the appellant.

5. It appears from the post mortem report (Ex.P-33) and testimony of autopsy surgeon that Kalyan Singh after subjected to sodomy, was strangulated. Post Mortem examination of the dead body reads as under:-

> Rigor mortis present. There are superficial burn over face, chest, abdomen, both thighs. Face swollen. Eyes bulging. Swelling over neck with Bruise 3 x 2cm in front of neck. Abrasion around anus and discharge from penis present.

Dr. S.S.Sharma (Pw.9), who conducted autopsy on the dead body deposed that cause of death was asphyxia due to throttling and prior to death deceased was subjected to sodomy.

6. The only circumstance on the basis of which appellant was found guilty was the recovery of ring, wrist watch and Voter Identity card

allegedly belonging to the deceased.

7. Bhawani Shankar Constable (Pw.13) and Matadeen IO (Pw.14) were associated with the recovery of incriminating articles. Bhawani Shankar arrested the appellant vide arrest memo Ex.P-33. According to him the appellant after arrest made disclosure statement (Ex.P-39) on the basis of which a green bag which contained wrist watch, ring and voter identity card got recovered and recovery memo (Ex.P-29) was drawn. Matadeen IO verbatim stated in the same lines.

8. On analysing the testimony of Bhawani Shankar and Matadeen from the point of view of trustworthiness we find their evidence highly unreliable and no reliance can be placed on it. The reasons are:-

(i) There is no reference in the written report (Ex.P-19) that Kalyan Singh was wearing wrist watch and ring. It was only stated that he was possessing a sum of Rs.800/- and a bag that contained clothes:-

"मेरे भाई कल्याण के पास 800 रू0 व गले मे लटकाने वाला थैला व पहनने के कपडे कम्बल व नारियल था"

(ii) Santosh (Pw.12), wife of deceased in her police statement (Ex.D-4) did not state that Kalyan Singh was wearing wrist watch and ring. Even in her statements at the trial, she did not say that at the time of departure from the village her husband was wearing wrist watch and ring.

(iii) It is inexplicable as to why Kalyan Singh would carry voter identity card with him?

(iv) Incident occurred on February 11, 2001, whereas the appellant

was arrested on July 6, 2001 i.e. after about five months. The prosecution failed to explain as to on what basis police arrested the appellant.

(v) Strangely when the deceased was last seen alive in the company of Harphool Singh (Pw.6), the Investigating Officer instead of nabbing Harphool Singh, made him witness. The relevant portion of Harphool Singh's statements reads as under:-

> "राणोली में मेरे पास मृतक कल्याण सिंह आकर बैठ गया, कल्याण सिंह को मैने पूछा कि आज माथे पर तिलक लगाकर किधर जा रहा है तो उसने जवाब दिया कि मैं आसाम जा रहा हूं। ... मैंने उससे पूछा कि तुम आसाम जा रहे हो और शराब पी रखी है यह ठीक नहीं है तो उसने कहा कि शराब पिये बगैर घर छोडा नहीं जाता। हम सीकर दिन के तीन सवा तीन बजे पहूंचे एवं अस्पताल के सामने उतरे। ... फिर वह शराब पीने गया या कहां गया मेरे को पता नहीं फिर वह 10-15 मिनट बाद मेरे पास ढाबे पर आया और मेरे साथ बैठकर एक रोटी का गासिया व दो हरी मिर्च खायी।"

(vi) Investigating Officer was not certain about the culprit. He even detained Sanwar Mal for two days as is evident from the statements of Sanwar Mal (Pw.3) who stated thus:-

> "यह सही है कि थानेदार जी ने यह कहा था कि हमारे को सांवरमल पर शक है कि यह मार सकता है। यह सही है कि इसीलिए उन्होने मेरे को दो दिन तक बैठाये रखा।"

9. Since details about ring and wrist watch were missing in the FIR and in the police statements of the wife and brothers of the deceased the identification of these articles after their alleged recovery does not assume importance. Ring and wrist watch are the articles of common used and can be found in any house. Their Lordships of the Supreme Court in State of Rajasthan Vs. Teg Bahadur and Others (2004)13 SCC 300, indicated in para 22 thus:-

> "The prosecution relied upon the recovery of earrings, hair clip, pieces of bangles belonging to the deceased from the well upon the disclosure statement made by the police. It may be stated that these articles of common used and can be found in any house. That apart, no family member of the deceased has identified these articles that the same belonged to the deceased and/ or she was wearing the same at the time of occurrence."

10. Having carefully scrutinised the entire material on record, we find that either the investigating officer implicated appellant, who was in his custody in another case, to solve the sensational matter of Sikar City or the appellant got involved on the basis of mere suspicion. We see no other material except the recovery of incriminating articles, that could connect the appellant with the crime.

11. It is well settled that mere suspicion, howsoever strong it may be, cannot take the place of legal proof. their Lordships of Supreme Court indicated in Ashish Batham Vs. State of M.P. (2002)7 SCC 317, observed as under:-

> "Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by the heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however strong probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and graver the charge is, greater should be the standard of proof required. Court dealing with criminal case at least should constantly remember that there is a long mental distance between "may be true" and "must be

> true" and this basic and golden rule only helps to maintain the vital distinction between "conjectures" and "sure conclusion" to be arrived at on the touchstone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record."

12. In the ultimate analysis we are of the view that the conviction of appellant only on the basis of recovery of alleged incriminating articles was not proper. The prosecution has failed to establish beyond reasonable doubt that it was the appellant who committed the crime.

13. For these reasons, we allow the appeals and set aside the impugned judgment dated July 2, 2002 of the learned Additional Sessions Judge No.2, Sikar. We acquit the appellant of the charges under sections 302, 201 and 379 IPC. The appellant Gheesa Lal @ Banwari, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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